

Agenda Item No. 12

State Water Resources Control Board
Tom Howard, Executive Director
P.O. Box 100
Sacramento, CA 95812-0100

Subject: San Joaquin River Restoration Settlement and Permitting

Reference: Telephone Conversation with John Brown August 10, 2010

Dear Mr. Howard:

The purpose of this letter is to make you aware of concerns of the Central Valley Flood Protection Board (Board) and its partner, the Lower San Joaquin Levee District (LSJLD) regarding the U.S. Bureau of Reclamation's program to restore the San Joaquin River. This letter is prompted by the referenced telephone conversation.

First, the Board is committed to working with the Bureau and its partners to bring to fruition this important Restoration Project. Our primary concern is that the restoration program does not compromise the flood safety features of the San Joaquin River and the Eastside and Mariposa bypasses. We have discussed these concerns with the Bureau and they have assured us their program will not adversely impact flood protection benefits. Nevertheless, these concerns have not yet been meaningfully addressed in written agreements despite the fact that the flood safety features are probably being compromised by the current interim flows.

The following issues are identified for your consideration in any future permit actions on the restoration program:

- The primary concern is that restoration flows in the Eastside and Mariposa Bypasses will preclude maintenance of these channels for flood protection purposes. The California State Reclamation Board, (renamed the Central Valley Flood Protection Board in 2007) accepted the responsibility for long term maintenance of these project features as part of the project agreement with the U.S. Army Corps of Engineers (Corps). Maintenance includes periodic clearing of vegetation and sediment in these channels to insure hydraulic capacity is maintained. The Board, in turn, transferred the responsibility for funding and conducting operation and maintenance of the flood features to the LSJLD as part of a second project agreement.
- Prior to the introduction of restoration flows, the two bypasses were dry every summer, facilitating vegetation management by spraying and burning. Sediment was removed by the underlying fee owners and by making it available as free fill. Under interim restoration flows, maintenance in the dry times is not an option, and while the exact nature of long term restoration flows is still under analysis, it is clear that long term maintenance practices are going to be substantially more costly. While significant progress has been made in identifying and estimating increased costs for maintenance, currently there is no agreement through which the Bureau will fund increased maintenance costs.

- The main obstacle is the Bureau's inability to indemnify and protect the LSJLD from legal challenges resulting from the Restoration Project. LSJLD's primary concern is that the Bureau has not secured agreements with owners of underlying fee within the bypasses that allows the conversion of their property, which is currently subject to a flood easement, to habitat for endangered species. While the Bureau initially said such agreements would be obtained, little progress is evident at this time. We understand LSJLD's concern about costs that might be incurred in defending a claim should they be "also named" in either inverse claims or other legal challenges. The LSJLD is working on specific provisions that could provide the protection they seek and also be acceptable to the Bureau.
- The invert of Mariposa Bypass is some six feet higher than the invert of the Eastside Bypass. This condition gives rise to a second related concern. Under the interim flows, the Bureau has left it to LSJLD to determine whether flows will continue past the Mariposa Bypass in the Eastside Bypass, or alternatively closing downstream gates, thus backing up flow in the Eastside bypass to the depth required to divert flows to the Mariposa Bypass. Flood operation criteria require that flood flows be first diverted to the Mariposa bypass, thus reserving the full capacity of the Eastside bypass for initial flood flows from local streams entering below the junction. Closing gates to divert flow to the Mariposa Bypass results in ponding water for two to four miles upstream in the Eastside bypass, effectively precluding vegetation and sediment maintenance. While this is perhaps not significant during interim flows, we share the LSJLD's opinion that the Bureau should investigate the advantages of permanent modification to eliminate the ponding and the potential maintenance and fishery impacts that might result during long term restoration.

As noted earlier, we are committed to assisting with implementation of this important Restoration Project. We recognize that the planning process has only been underway for a year, and that there are many issues that must be resolved. We are providing this summary to you in the hopes that we can work jointly with you and the Bureau in resolving these matters and insuring that regional impacts have been identified and resolved at the earliest possible time.

Thank you for the opportunity to express these concerns, and please do not hesitate to contact me if you wish to discuss this matter further.

Sincerely,

Benjamin F. Carter
President
Central Valley Flood Protection Board

cc U.S. Bureau of Reclamation
 Mark Cowin, Department of Water Resources
 Lower San Joaquin Levee District
 California Department of Fish & Game
 NOAA Fisheries
 U.S. Fish & Wildlife Services